

Sixty-eighth  
Legislative Assembly  
of North Dakota

**HOUSE BILL NO. 1423**

Introduced by

Representatives Thomas, Beltz, Fegley, Grueneich, Kempenich

Senators Elkin, Kessel, Luick, Myrdal

1 A BILL for an Act to create and enact a new section to chapter 4.1-01 of the North Dakota  
2 Century Code, relating to a model zoning review task force; and to amend and reenact sections  
3 11-33-02.1, 23.1-01-04, and 58-03-11.1 of the North Dakota Century Code, relating to a model  
4 zoning ordinance for animal feeding operations and the North Dakota insurance reserve fund.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1. AMENDMENT.** Section 11-33-02.1 of the North Dakota Century Code is  
7 amended and reenacted as follows:

8 **11-33-02.1. Farming and ranching regulations - Requirements - Limitations -**

9 **Definitions.**

10 1. For purposes of this section:

11 a. "Animal feeding operation" means a lot or facility, other than normal wintering  
12 operations for cattle and an aquatic animal production facility, where the following  
13 conditions are met:

14 (1) Animals, other than aquatic animals, have been, are, or will be stabled or  
15 confined and fed or maintained for at least forty-five days in a twelve-month  
16 period; and

17 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained  
18 in the normal growing season over any portion of the lot or facility.

19 b. "Farming or ranching" means cultivating land for the production of agricultural  
20 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.

21 The term does not include:

22 (1) The production of timber or forest products; or

1                   (2) The provision of grain harvesting or other farm services by a processor or  
2                   distributor of farm products or supplies in accordance with the terms of a  
3                   contract.

4           c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,  
5           elk, fur animals raised for their pelts, and any other animals that are raised, fed,  
6           or produced as a part of farming or ranching activities.

7           d. "Location" means the setback distance between a structure, fence, or other  
8           boundary enclosing an animal feeding operation, including its animal waste  
9           collection system, and the nearest occupied residence, the nearest buildings  
10          used for nonfarm or nonranch purposes, or the nearest land zoned for residential,  
11          recreational, or commercial purposes. The term does not include the setback  
12          distance for the application of manure or for the application of other recycled  
13          agricultural material under a nutrient management plan approved by the  
14          department of environmental quality.

15          ~~e. "Model zoning ordinance" means the most current model zoning ordinance~~  
16          ~~related to animal feeding operations published by the agriculture commissioner.~~  
17          ~~The setbacks provided in subdivision a of subsection 7 of section 23.1-06-15~~  
18          ~~must be identical to the setbacks provided in the model zoning ordinance.~~

19          2. For purposes of this section, animal units are determined as as provided in  
20          subdivision c of subsection 7 of section 23.1-06-15.

21          3. A board of county commissioners may not prohibit or prevent the use of land or  
22          buildings for farming or ranching and may not prohibit or prevent any of the normal  
23          incidents of farming or ranching.

24          4. A board of county commissioners may not preclude the development of an animal  
25          feeding operation in the county.

26          5. A board of county commissioners may not prohibit the reasonable diversification or  
27          expansion of a farming or ranching operation.

28          6. A board of county commissioners may adopt regulations that establish different  
29          standards for the location of animal feeding operations based on the size of the  
30          operation and the species and type being fed.

- 1       7. If a regulation would impose a substantial economic burden on an animal feeding  
2       operation in existence before the effective date of the regulation, the board of county  
3       commissioners shall declare that the regulation is ineffective with respect to any  
4       animal feeding operation in existence before the effective date of the regulation.
- 5       8. a. A board of county commissioners may establish high-density agricultural  
6       production districts in which setback distances for animal feeding operations and  
7       related agricultural operations are less than those in other districts.
- 8       b. A board of county commissioners may establish, around areas zoned for  
9       residential, recreational, or nonagricultural commercial uses, low-density  
10      agricultural production districts in which setback distances for animal feeding  
11      operations and related agricultural operations are greater than those in other  
12      districts; provided, the low-density agricultural production districts may not extend  
13      more than one and one-half miles [2.40 kilometers] from the edge of the area  
14      zoned for residential, recreational, or nonagricultural commercial uses.
- 15      ~~c. The setbacks provided for in this subsection may not exceed those established in~~  
16      ~~subdivision a of subsection 7 of section 23.1-06-15 unless the county can~~  
17      ~~demonstrate compelling, objective evidence specific to the county created by an~~  
18      ~~independent third party which requires a greater setback within the county, in~~  
19      ~~which case the setbacks may exceed those established in subdivision a of~~  
20      ~~subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback~~  
21      ~~under this subsection is greater than the corresponding setback established in~~  
22      ~~subdivision a of subsection 7 of section 23.1-06-15, any person whose animal~~  
23      ~~feeding operation will be or has been affected by the applicable county~~  
24      ~~ordinance or party may request the agriculture commissioner review the~~  
25      ~~ordinance. After the review, the agriculture commissioner shall provide a~~  
26      ~~summary of the review to the attorney general and request an opinion from the~~  
27      ~~attorney general regarding whether the ordinance and setback are lawful. An~~  
28      ~~opinion from the attorney general issued under this subsection governs the~~  
29      ~~actions of public officials until the opinion is superseded by a court of this state.~~
- 30      ~~d. If the attorney general issues an opinion that concludes an ordinance or setback~~  
31      ~~is unlawful, and the county fails to formally revoke the ordinance or setback~~

~~before a lawsuit challenging the validity of the ordinance or setback is initiated, the county may not utilize the North Dakota insurance reserve fund in connection with defending the lawsuit. If a party successfully challenges an ordinance or setback that previously has been determined to be unlawful by the attorney general and the county has failed to revoke the ordinance or setback, the court must award the challenging party's actual attorneys' fees, costs, and expenses.~~

c. A board of county commissioners may not adopt or enforce setbacks applicable to animal feeding operations that exceed the setback distances provided in subsection 7 of section 23.1-06-15.

d.e. For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by an animal feeding operation.

9. A person intending to construct an animal feeding operation may petition the board of county commissioners for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 11-33-22 before the date the petition was received by the county. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of county commissioners does not validly object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the county zoning regulations. If the county allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must comply with this section. The county shall make a ~~decision~~ valid determination on the application within sixty days of the receipt of a complete conditional use permit application. If the board of county commissioners determines the animal feeding operation would comply with zoning regulations or fails to object under this section, the county may not impose additional zoning regulations relating to the nature, scope, or location of the animal feeding operation later, provided an application is submitted promptly to the department of environmental equality, the department issues a final permit, and construction of the animal feeding operation commences within three

1 years from the date the department issues its final permit and any permit appeals are  
2 exhausted. Any objection or determination that subsequently is reversed, set aside, or  
3 invalidated by a court of this state, is not a valid objection or decision for the purpose  
4 of calculating a procedural timeline under this section. A procedural timeline imposed  
5 by this section continues to be in effect during the pendency of any appeal of a county  
6 action or determination. A board of county commissioners may not:

- 7 a. Regulate or impose zoning restrictions or requirements on animal feeding  
8 operations or other agricultural operations except as expressly permitted under  
9 this section; ~~or~~
- 10 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or  
11 requirements on animal feeding operations; ~~or~~
- 12 c. Charge fees or expenses of any kind totaling, in the aggregate, more than five  
13 hundred dollars in connection with any permit, petition, application, or other  
14 request relating to animal feeding operations; or
- 15 d. Require an existing animal feeding operation to have a permit for improvements  
16 or other modifications of an operation that is in current compliance with state and  
17 federal regulations or require an existing operation to have a permit for  
18 improvements or other modifications that bring the operation into compliance with  
19 state or federal regulations, of the modifications or improvements do not cause  
20 the operation to exceed animal numbers of the setback requirement.

21 ~~10. A county may rely on the North Dakota insurance reserve fund for the defense of any~~  
22 ~~litigation regarding the validity of county ordinances, determinations, decisions, or~~  
23 ~~objections relating to animal feeding operations, if the county's ordinances regulating~~  
24 ~~animal feeding operations are identical to the model zoning ordinance. A county~~  
25 ~~ordinance relating to animal feeding operations which deviates from, supplements,~~  
26 ~~adds to, or fails to adopt the model zoning ordinance in its entirety may not utilize the~~  
27 ~~North Dakota insurance reserve fund for any litigation arising from or relating to county~~  
28 ~~ordinances, determinations, decisions, or objections relating to animal feeding~~  
29 ~~operations. If a party successfully challenges the validity of a county ordinance,~~  
30 ~~determination, decision, or objection related to animal feeding operations, the court~~  
31 ~~shall award the reimbursement of actual attorneys' fees, costs, and expenses.~~

~~11. For each new animal feeding operation located within a county, the county must receive two percent of the cost of developing the animal feeding operation, paid from the innovation loan fund under chapter 6-09.18, when:~~

~~a. The date construction of the animal feeding operation is complete; and~~

~~b. The animal feeding operation receives its final permit or regulatory approval to operate. If a single animal feeding operation is located in more than one county, the county within which a majority of the animal feeding operation, as measured by square feet, is located must receive the cost share from the innovation loan fund.~~

10. If a party challenges the validity of a county ordinance, determination, decision, or objection related to animal feeding operations, the court shall award the prevailing party actual attorney's fees, costs, and expenses.

**SECTION 2. AMENDMENT.** Section 23.1-01-04 of the North Dakota Century Code is amended and reenacted as follows:

**23.1-01-04. Rulemaking authority - Limitations.**

1. Except as provided in subsection 2, the department of environmental quality may not adopt any rule for the purpose of the state administering a program under the federal Clean Air Act [42 U.S.C. 7401 et seq.]; federal Clean Water Act [33 U.S.C. 1251 et seq.]; federal Safe Drinking Water Act [42 U.S.C. 300 et seq.]; federal Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]; federal Comprehensive Environmental Response, Compensation, and Liability Act [42 U.S.C. 9601 et seq.]; federal Emergency Planning and Community Right to Know Act of 1986 [42 U.S.C. 11001 et seq.]; federal Toxic Substances Control Act [42 U.S.C. 2601 et seq.]; or federal Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.]; which is more stringent than corresponding federal regulations that address the same circumstances. In adopting the rules, the department may incorporate by reference corresponding federal regulations.
2. The department may adopt rules more stringent than corresponding federal regulations or adopt rules where there are no corresponding federal regulations, for the purposes described in subsection 1, only if the department makes a written finding after public comment and hearing and based upon evidence in the record, that

1 corresponding federal regulations are not adequate to protect the public health and  
2 the environment of the state. Those findings must be supported by an opinion of the  
3 department referring to and evaluating the public health and environmental information  
4 and studies contained in the record which form the basis for the department's  
5 conclusions.

6 3. If the department, upon petition by any person affected by a rule of the department,  
7 identifies rules more stringent than federal regulations or rules where there are no  
8 corresponding federal regulations, the department shall review and revise those rules  
9 to comply with this section within nine months of the filing of the petition.

10 4. Any person issued a notice of violation, or a denial of a permit or other approval,  
11 based upon a rule of the department which is more stringent than a corresponding  
12 federal regulation or where there is no corresponding federal regulation, may assert a  
13 partial defense to that notice, or a partial challenge to that denial, on the basis and to  
14 the extent the department's rule violates this section by imposing requirements more  
15 stringent than corresponding federal regulations, unless the more stringent rule of the  
16 department has been adopted in compliance with this section.

17 ~~5. The department may not approve, review, or deny any permit application contingent~~  
18 ~~on whether an applicant is in compliance with applicable county or township zoning~~  
19 ~~ordinances.~~

20 **SECTION 3. AMENDMENT.** Section 58-03-11.1 of the North Dakota Century Code is  
21 amended and reenacted as follows:

22 **58-03-11.1. Farming and ranching regulations - Requirements - Limitations -**  
23 **Definitions.**

24 1. For purposes of this section:

25 a. "Animal feeding operation" means a lot or facility, other than normal wintering  
26 operations for cattle and an aquatic animal production facility, where the following  
27 conditions are met:

28 (1) Animals, other than aquatic animals, have been, are, or will be stabled or  
29 confined and fed or maintained for a total of forty-five days or more in any  
30 twelve-month period; and

1 (2) Crops, vegetation, forage growth, or postharvest residues are not sustained  
2 in the normal growing season over any portion of the lot or facility.

3 b. "Farming or ranching" means cultivating land for the production of agricultural  
4 crops or livestock, or raising, feeding, or producing livestock, poultry, milk, or fruit.

5 The term does not include:

6 (1) The production of timber or forest products; or

7 (2) The provision of grain harvesting or other farm services by a processor or  
8 distributor of farm products or supplies in accordance with the terms of a  
9 contract.

10 c. "Livestock" includes beef cattle, dairy cattle, sheep, swine, poultry, horses, bison,  
11 elk, fur animals raised for their pelts, and any other animals that are raised, fed,  
12 or produced as a part of farming or ranching activities.

13 d. "Location" means the setback distance between a structure, fence, or other  
14 boundary enclosing an animal feeding operation, including its animal waste  
15 collection system, and the nearest occupied residence, the nearest buildings  
16 used for nonfarm or nonranch purposes, or the nearest land zoned as a  
17 residential, recreational, or commercial zoning district. The term does not include  
18 the setback distance for the application of manure or for the application of other  
19 recycled agricultural material under a nutrient management plan approved by the  
20 department of environmental quality.

21 ~~e. "Model zoning ordinance" means the most current model zoning ordinance~~  
22 ~~related to animal feeding operations published by the agriculture commissioner.~~  
23 ~~The setbacks provided in subdivision a of subsection 7 of section 23.1-06-15~~  
24 ~~shall be identical to the setbacks provided in the model zoning ordinance. The~~  
25 ~~setbacks provided in subdivision a of subsection 7 of section 23.1-06-15 shall be~~  
26 ~~identical to the setbacks provided in the model zoning ordinance.~~

27 2. For purposes of this section, animal units are determined as provided under  
28 subdivision c of subsection 7 of section 23.1-06-15.

29 3. A board of township supervisors may not prohibit or prevent the use of land or  
30 buildings for farming or ranching or any of the normal incidents of farming or ranching.



- 1       4. A regulation may not preclude the development of an animal feeding operation in the
- 2       township.
- 3       5. A board of township supervisors may not prohibit the reasonable diversification or
- 4       expansion of a farming or ranching operation.
- 5       6. A board of township supervisors may adopt regulations that establish different
- 6       standards for the location of animal feeding operations based on the size of the
- 7       operation and the species and type being fed.
- 8       7. If a regulation would impose a substantial economic burden on an animal feeding
- 9       operation in existence before the effective date of the regulation, the board of township
- 10      supervisors shall declare that the regulation is ineffective with respect to any animal
- 11      feeding operation in existence before the effective date of the regulation.
- 12      8. a. A board of township supervisors may establish high-density agricultural
- 13         production districts in which setback distances for animal feeding operations and
- 14         related agricultural operations are less than those in other districts.
- 15       b. A board of township supervisors may establish, around areas zoned for
- 16         residential, recreational, or nonagricultural commercial uses, low-density
- 17         agricultural production districts in which setback distances for animal feeding
- 18         operations and related agricultural operations are greater than those in other
- 19         districts; provided, the low-density agricultural production districts may not extend
- 20         more than one-half mile [0.80 kilometer] from the edge of the area zoned for
- 21         residential, recreational, or nonagricultural commercial uses.
- 22      ~~c. The setbacks provided for in this subsection may not exceed those established in~~
- 23      ~~subdivision a of subsection 7 of section 23.1-06-15 unless the township can~~
- 24      ~~demonstrate compelling, objective evidence specific to the township created by~~
- 25      ~~an independent third party, which requires a greater setback within the township,~~
- 26      ~~in which case the setbacks may exceed those established in subdivision a of~~
- 27      ~~subsection 7 of section 23.1-06-15 by no more than fifty percent. If a setback~~
- 28      ~~under this subsection is greater than the corresponding setback established in~~
- 29      ~~subdivision a of subsection 7 of section 23.1-06-15, a person whose animal~~
- 30      ~~feeding operation will be or has been affected by the applicable township~~
- 31      ~~ordinance any person or party may request the agriculture commissioner to~~

review the ordinance. After the review, the agriculture commissioner shall provide a summary of the review to the attorney general and request an opinion from the attorney general regarding whether the ordinance and setback are lawful. An opinion from the attorney general issued under this subsection governs the actions of public officials until the opinion is superseded by a court of this state.

~~d. If the attorney general issues an opinion that concludes an ordinance or setback is unlawful, and the township fails to formally revoke the ordinance or setback before a lawsuit challenging the validity of the ordinance or setback is initiated, the township may not utilize the North Dakota insurance reserve fund in connection with defending the lawsuit. If a party successfully challenges an ordinance or setback that previously has been determined to be unlawful by the attorney general and the township has failed to revoke the ordinance or setback, the court shall award the challenging party's actual attorneys' fees, costs, and expenses.~~

c. A board of county commissioners may not adopt or enforce setbacks applicable to animal feeding operations that exceed the setback distances provided in subsection 7 of section 23.1-06-15.

~~d.e.~~ For purposes of this subsection, a "related agricultural operation" means a facility that produces a product or byproduct used by an animal feeding operation.

9. A person intending to construct an animal feeding operation may petition the board of township supervisors for a determination whether the animal feeding operation would comply with zoning regulations adopted under this section and filed with the department of environmental quality under section 58-03-17 before the date the petition was received by the township. The petition must contain a description of the nature, scope, and location of the proposed animal feeding operation and a site map showing road access, the location of any structure, and the distance from each structure to the nearest section line. If the board of township supervisors does not validly object to the petition within sixty days of receipt, the animal feeding operation is deemed in compliance with the township zoning regulations. If the township allows animal feeding operations as a conditional use, the conditional use regulations must be limited to the board's authority under this section, and the approval process must

1 comply with this section. The township shall make a ~~decision~~valid determination on the  
2 application within sixty days of the receipt of a complete conditional use permit  
3 application. If the board of township supervisors determines the animal feeding  
4 operation would comply with zoning regulations or fails to object under this section, the  
5 township may not impose additional zoning regulations relating to the nature, scope,  
6 or location of the animal feeding operation later, provided an application is submitted  
7 promptly to the department of environmental quality, the department issues a final  
8 permit, and construction of the animal feeding operation commences within three  
9 years from the date the department issues its final permit and any permit appeals are  
10 exhausted. Any objection or determination that subsequently is reversed, set aside, or  
11 invalidated by a court of this state, is not a valid objection or decision for the purpose  
12 of calculating a procedural timeline under this section. A procedural timeline imposed  
13 by this section continues to be in effect during the pendency of any appeal of a  
14 township action or determination. A board of township supervisors may not:

- 15 a. Regulate or impose zoning restrictions or requirements on animal feeding  
16 operations or other agricultural operations except as expressly permitted under  
17 this section; ~~or~~
- 18 b. Impose water quality, closure, site security, lagoon, or nutrient plan regulations or  
19 requirements on animal feeding operations; ~~or~~
- 20 c. Charge fees or expenses of any kind totaling, in the aggregate, more than five  
21 hundred dollars in connection with any permit, petition, application, or other  
22 request relating to animal feeding operations; or
- 23 d. Require an existing animal feeding operation to have a permit for improvements  
24 or other modifications of an operation that is in current compliance with state and  
25 federal regulations or require an existing operation to have a permit for  
26 improvements or other modifications that bring the operation into compliance with  
27 state or federal regulations, if the modifications or improvements do not cause  
28 the operation to exceed animal numbers of the setback requirement.

29 ~~10. A township may rely on the North Dakota insurance reserve fund for the defense of~~  
30 ~~any litigation regarding the validity of township ordinances, determinations, decisions,~~  
31 ~~or objections relating to animal feeding operations, if the township's ordinances~~

~~regulating animal feeding operations are identical to the model zoning ordinance. A township ordinance relating to animal feeding operations which deviates from, supplements, adds to, or fails to adopt the model zoning ordinance in its entirety may not utilize the North Dakota insurance reserve fund for any litigation arising from or relating to township ordinances, determinations, decisions, or objections relating to animal feeding operations. If a party successfully challenges the validity of a township ordinance, determination, decision, or objection related to animal feeding operations, the court shall award the reimbursement of actual attorneys' fees, costs, and expenses.~~

~~11. For each new animal feeding operation located within a township, the township must receive one percent of the cost of developing the animal feeding operation, paid from the innovation loan fund under chapter 6-09.18, when:~~

~~a. The date construction of the animal feeding operation is complete; and~~

~~b. The animal feeding operation receives its final permit or regulatory approval to operate. If a single animal feeding operation is located in more than one township, the township within which a majority of the animal feeding operation, as measured by square feet, is located must receive the cost share from the innovation loan fund.~~

10. If a party challenges the validity of a county ordinance, determination, decision, or objection related to animal feeding operations, the court shall award the prevailing party actual attorney's fees, costs, and expenses.

**SECTION 4.** A new section to chapter 4.1-01 of the North Dakota Century Code is created and enacted as follows:

**Model zoning review task force - Report to the legislative management.**

1. Model zoning review task force consists of:

a. The agriculture commissioner or the commissioner's designee, as chair.

b. The director of the department of environmental quality or the director's designee.

c. The executive director of the North Dakota Indian affairs commission or the director's designee.

d. Two members from the North Dakota township association. One member must be an agriculture producer.

1           e.    Two members from the association of counties. One member must be an  
2           agriculture producer.

3           f.    One member of the milk producers association of North Dakota.

4           g.    One member of the North Dakota stockmen's association.

5           h.    One member of the North Dakota pork council.

6           i.    One member of the North Dakota corn growers association.

7           j.    One member of the North Dakota soybean growers association.

8           k.    One member of the North Dakota farmers union.

9           l.    One member of the North Dakota farm bureau.

10          m.   One member of the North Dakota planning association.

11         2.    The task force shall:

12           a.   Develop a new, or update a previously created model zoning ordinance during  
13           the 2023-24 biennium.

14           b.   Review low-density agriculture districts and applicable setbacks and uses.

15           c.   Review current zoning districts for the purpose of creating overlay districts.

16           d.   Provide a report to the legislative management on changes to the model zoning  
17           ordinance.

18           e.   Meet every five years to review and update the model zoning ordinance.

19         3.    The agriculture commissioner shall provide the task force with administrative services.

20         4.    For purposes of this section "model zoning ordinance" means the most current model  
21         zoning ordinance related to animal feeding operations in this state.